

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

00 AUG -1; FRI 0 00

CURTIS RAY HOLT,

Petitioner,

V.

WARDEN RALPH HOOKS;
ATTORNEY GENERAL FOR THE
STATE OF ALABAMA,

Respondents.

U.S. DISTRICT COURT
N.D. OF ALABAMA

) CIVIL ACTION NO. 00-BU-0044-M

ENTERED
AUG 04 2000

MEMORANDUM OF OPINION

On August 1, 2000 petitioner filed objections to the magistrate judge's July 17, 2000 Findings and Recommendation. From petitioner's objections it is clear that petitioner does not understand the magistrate judge's findings and recommendation. The magistrate judge concluded that this court does not have jurisdiction to even consider this claim because it is a second or successive petition and because petitioner did not first obtain an order from the Eleventh Circuit Court of Appeals authorizing this court to consider a second or successive petition. Title 28, U.S.C. § 2244(b)(3)(A) provides:

Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

In other words, before filing this case petitioner should have filed a motion in the Eleventh Circuit Court of Appeals requesting that the court issue an order authorizing this court (the United States District Court for the Northern District of Alabama) to consider a second or successive petition.

Petitioner's discussion of a certificate of appealability (28 U.S.C. § 2253) is simply inapplicable to this action as this court has not yet concluded that it lacks jurisdiction to issue a certificate of appealability.

Petitioner's objections are OVERRULED.

An appropriate final judgment will be entered.

DONE this the 31st day of August, 2000.

A handwritten signature in black ink, appearing to read 'H. Dean Buttram, Jr.', written over a horizontal line.

H. DEAN BUTTRAM, JR.
UNITED STATES DISTRICT JUDGE